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AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the
MASSACHUSETTS

OCT 18 PM 1:31

U.S. DISTRICT COURT
CLERK'S OFFICEWilliam Fischer*Petitioner*

v.

Case No. _____

*(Supplied by Clerk of Court)*A. Boncher, Warden*Respondent**(name of warden or authorized person having custody of petitioner)*

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: William Fischer
(b) Other names you have used: N/A
2. Place of confinement:
(a) Name of institution: Federal Medical Center Devens (FMC Devens)
(b) Address: PO Box 879
Ayer, Massachusetts 01432-0879
(c) Your identification number: 76142-067
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: United States District Court for the Middle District of Pennsylvania, Scranton, Pennsylvania
(b) Docket number of criminal case: 3:17-CR-000374
(c) Date of sentencing: September 21, 2018
☐ Being held on an immigration charge
☐ Other (explain): _____

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Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☒ Disciplinary proceedings
- ☐ Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: FMC Devens, A. Boncher, Warden(b) Docket number, case number, or opinion number: Incident Report# 3473331

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Found guilty of Prohibited Act# 306 (Refusing to accept a program assignment)

Loss of telephone privilege for 14 days, rise of Security Custody Score of

4 points, rise in PATTERN score and ineligibility to transfer for 18 months.

(d) Date of the decision or action: February 2, 2021

Your Earlier Challenges of the Decision or Action

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Federal Bureau of Prisons, FMC Devens
Administrative Remedy with A. Boncher, Warden(2) Date of filing: February 26, 2021(3) Docket number, case number, or opinion number: Case# 1071508-F1(4) Result: Request for Incident Report expungment denied.(5) Date of result: March 11, 2021

(6) Issues raised: Failure of FMC Devens staff to follow the BOP Quarantine

Guidance (Exhibit B) exposing Mr. Fischer to a Covid-19 positive inmate

and then after that, mandating that I be housed with another inmate who

had been exposed to a positive inmate for 15 days. (see exhibits A,B & C)

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(b) If you answered "No," explain why you did not appeal: _____

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Regional Administrative Remedy Appeal
Federal Bureau of Prisons (see exhibits D & F)

(2) Date of filing: March 18, 2021

(3) Docket number, case number, or opinion number: Remedy ID# 1071508-R1

(4) Result: Denied

(5) Date of result: Dated May 24, 2021 but was not received until July 15, 2021

(6) Issues raised: The Warden of FMC Devens ignored the failure of the Staff
to follow the BOP Quarantine Guidance which resulted in Mr. Fischer

being unnecessarily exposed to a Covid-19 positive inmate and their push
to then house me with another inmate who had even greater exposure. All
against the stated quarantine policy. (see exhibits D & F).

(b) If you answered "No," explain why you did not file a second appeal: _____

9. Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☒ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Central Office Administrative Remedy Appeal
Federal Bureau of Prisons (see exhibit E).

(2) Date of filing: June 1, 2021

(3) Docket number, case number, or opinion number: Remedy ID# 1071508-A1

(4) Result: Unknown, response was due August 8, 2021

(5) Date of result: N/A

(6) Issues raised: Failure of Regional Office to respond in time to file the
Central Office Appeal. Failure of the Warden and staff of FMC Devens to
follow the BOP Quarantine Guidance. Mr. Fischers exposure to a Covid-19

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positive inmate. The continued pressure of the staff to move another exposed inmate into my cell despite the possible dire medical consequences. The adverse affect the incident report has on the Custody Classification and PATTERN scores of Mr. Fischer (see exhibit E).

(b) If you answered "No," explain why you did not file a third appeal: _____

10. Motion under 28 U.S.C. § 2255

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes ☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
(b) Date of the removal or reinstatement order: _____
(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☒ No

If "Yes," provide:

- (1) Date of filing: _____
(2) Case number: _____
(3) Result: _____
(4) Date of result: _____
(5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
(2) Date of filing: _____
(3) Case number: _____

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- (4) Result: _____
 (5) Date of result: _____
 (6) Issues raised: _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: The Disciplinary Incident Report violated Mr. Fischers Due
Process rights.

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(a) Supporting facts *(Be brief. Do not cite cases or law.):*

BOP Quarantine Policies were not followed. This lead to Mr. Fischer being exposed to a Covid-19 positive inmate during his quarantine. And then a second time when the Staff failed to follow the policies and attempted to place a positive Covid-19 exposed inmate with Mr. Fischer (see exhibits B,C D & E).

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes☐ No

GROUND TWO: Reporting Officer failed to list Mr. Fischers reason for the.. refusal or the fact that the failure to follow the Quarantine Guidance had already exposed Mr. Fischer to a Covid-19 positive inmate.

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

The Incident Report (exhibit A) shows the omission of facts in the Officers statement. The UDC also omits the fact that inmate Goodwin 00208-138 had been placed with Mr. Fischer just before testing and then tested positive for Covid-19. Mr. Fischer had been in quarantine alone for 13 days prior to that move. BOP form; BP-A0292 and BP-A295.052 as well as the test results from Quest Diagnostics support these facts.

(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes☐ No

GROUND THREE: The Disciplinary Incident Report has caused both short and long term negative affects on Mr. Fischers Custody.

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

It has resulted in rasing Mr. Fischers Custody Classification score 4 points renders him ineligible to request a transfer closer to his family residence for a minimum of 18 months. Has raised his PATTERN score by 7 points in the General and by 4 points in the Violent Assessment sections. Portions of this will remain on the PATTERN score for 10 years. It also acts to diminish his otherwise outstanding custody and disciplinary record by implying that he is anything other than the "Model Inmate" Staff and his Unit Team have described

(b) Did you present Ground Three in all appeals that were available to you?

☒ Yes☐ No

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GROUND FOUR: The Administrative Remedy Process, 28 CFR §542 is inadequate and ineffective to correct this injustice.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

The Administrative Remedy Process has failed to address the staff of FMC Devens own failure to follow the BOP Quarantine Guidance, which lead to Mr. Fischers exposure. Both the Regional Office as well as the Central Office failed to reply to his appeals within the allotted time even with extensions. As shown in the appeal to Central Office (exhibit E) Mr. Fischer was unable to provide a copy of the Regional reply, because it did not arrive until nearly 2 months after the extended due date. Well beyond the allowable time to file an appeal of the Regional Offices denial to the Central Office see (exhibit F). At this point in time, the Central Office is more than 2 months past their extended time to consider the matter. Yet even after a seperate letter (exhibit G) was sent to inquire the status of the appeal, no response has come.

(b) Did you present Ground Four in all appeals that were available to you?

☒ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Petitioner requests an order by the court to direct the Respondent to expunge the incident report and restore Petitioner's Custody Classification and PATTERN scores to reflect the expungment of the report.

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

October 13, 2021

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

10/13/2021

William Tucker

Signature of Petitioner

Signature of Attorney or other authorized person, if any

**2241 Petition for Writ of Habeas Corpus
William Fischer v. A. Boncher, Warden FMC Devens**

Exhibits list:

(Exhibit A) Incident Report# 3473331 (1 page)

(Exhibit B) BOP Quarantine Guidance. (5 pages)

(Exhibit C) Request for Administrative Remedy to Warden (SP-9) with exhibits and the Wardens reply. (13 pages)

(Exhibit D) Regional Administrative Remedy Appeal (BP-10) with response extension. (3 pages)

(Exhibit E) Central Office Administrative Remedy Appeal (BP-11) with exhibits and response extension. (7 pages)

(Exhibit F) Regional Administrative Remedy Appeal Response. (2 pages)

**(Exhibit G) Letter from Petitioner Mr. William Fischer to the BOP Central Office requesting the status of the Central office
Administrative Remedy Appeal Response (BP-11). (1 page)**